

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KRISTEN ERWIN,

Plaintiff,

v.

DEFENSE HEALTH AGENCY,

Defendant.

No. 2:24-cv-2126 DJC AC

ORDER TO SHOW CAUSE

Plaintiff, appearing in pro se, filed a complaint and paid the filing fee on August 7, 2024. ECF No. 1. The same day, a summons and scheduling order was issued in this case ordering the plaintiff to serve a copy of the scheduling order and complete service of process within 90 days of filing the complaint. ECF Nos. 2, 3. Plaintiff was cautioned that failure to complete service within 90 days may result in dismissal pursuant to Fed. R. Civ. P. 40(m). Id. On August 19, 2024, plaintiff filed an affidavit of service. ECF No. 4. The affidavit indicated that indicated that Patriot Process Service served a paralegal at the Office of General Counsel for the Defense Health Agency at 7700 Arlington Blvd. in Falls Church, Virginia. ECF No. 4 at 2. Defendant has not appeared.

Plaintiff's proof of service does not demonstrate that service has been properly completed. Federal Rule of Civil Procedure 4(i) outlines the rule for serving the United States, as well as its agencies and employees. The Rule requires a plaintiff to take three steps:

(A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—or (ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney’s office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

Fed. R. Civ. P. 4(i)(1). The Attorney General has designated the Assistant Attorney General for Administration, Justice Management Division, to accept service of summonses and complaints.

28 C.F.R. § 0.77(j). The U.S. Department of Justice is located at 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001. Additionally, to sue a United States Agency such as the Defense Health Agency, “a party must serve the United States *and also* send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.”

Fed. R. Civ. P. 4(i)(2) (emphasis added).

It is apparent the plaintiff has not followed the instructions in Rule 4(i). Accordingly, plaintiff is ORDERED to properly complete service. Plaintiff must file a notice with the court affirming that service has been properly completed. Local Rule 110 provides that failure to comply with court orders or the Local Rules may be grounds for imposition of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff is Ordered to Show Cause, in writing no later than December 30, 2024, why this action should not be dismissed for failure to prosecute;
2. Plaintiff’s filing of proper proofs of service upon defendants will be deemed good cause shown; and

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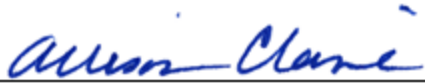
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3. If plaintiff fails to comply with this order, the case will be dismissed without prejudice for failure to prosecute.

DATED: December 11, 2024


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE